CHEANG KOK CHEOW

v.

SETIAUSAHA KEHORMAT BAGI PERTUBUHAN AKITEK MALAYSIA & ANOR.

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING SUMMONS NO. R2-24-26-93]
7 OCTOBER 1993

ADMINISTRATIVE LAW: Unincorporated associations - Member sent letter to Secretary of association to raise certain issues at Annual General Meeting - Whether Secretary dutybound to circulate letter and issues to all members - Whether letter amounted to notice - Whether issues amounted to special business - Passing of resolution at Annual General Meeting - Quorum present at beginning of meeting - Quorum insufficient when resolution passed - Whether resolution valid.

The plaintiff in this case is a member of Pertubuhan Akitek Malaysia (PAM), a society registered under the Societies Act, 1966. PAM was due to hold its 26th Annual General Meeting (AGM) on 18 July 1992. By a letter dated 3 July 1992 (the letter) which the plaintiff considered to be a notice under clause VI.2.3. (j) of the Revised Constitution of PAM, the plaintiff wrote to the first defendant submitting a list of issues relating to PAM which the plaintiff intended to be deliberated upon by the members at the coming AGM. The plaintiff had also expected that the letter would be circulated to all the members by the first defendant by virtue of clause VI.6 of the said Revised Constitution.

In essence clause VI.3.2(j) says that one of the ordinary businesses of the AGM is to " transact any business of which due notice in accordance with Rule shall have been given". Clause VI. 6, on the other hand, provides that if there is any special business to be transacted at the AGM then the general nature of such business should be given to all the members.

The first defendant did circulate the letter but only to the members of the Council and not to the members at large. 60 members of PAM attended the said 26th AGM on 18 July 1992 and at the meeting it was resolved, among other things, that the issues as raised by the plaintiff in the letter be referred to another forum. This resolution was passed by a majority vote in which only 36 members participated. The quorum for the passing of resolution was 46.

The plaintiff applied for declarations *inter alia:*

1. that the first and second defendant were bound by the Revised Constitution to circulate issues or the general nature thereof, where due notice has been given, to all members of Pam before an AGM;
2. That the resolution that was passed by 36 members at the said 26th AGM was null and void and of no effect as there was a lack of quorum.

Held:

[1] The letter could not be a notice under clause VI.3.2(j) as it only imposed an obligation on the part of the Council being the governing body of PAM to give explanations and clarifications on the issues raised. This the Council did as shown in the minutes of the meeting.

[2] The list of issues only highlighted certain events and issues in respect of which the plaintiff sought explanations and clarifications from the Council. As there was no specific business or specific motion or resolution that the AGM was required to transact or consider, the letter could not therefore be regarded as a case of special business.

[3] The rule is that if there was a quorum present at the beginning of the meeting when it proceeded to business,the departure of a member reducing the meeting below the number required for a quorum did not invalidate the proceedings of the meeting after his departure. The resolution was therefore validly passed.

[4] Obiter: The plaintiff in this case is not entirely without a remedy. Under clause VI.4 of the Revised Constitution he can requisition for an Extra General Meeting and at the meeting he can even table a motion of no confidence in the Council.

[Application dismissed].

Case referred to:
In re Hartley Baird LD [1955] 1 Ch. 143 ***(foll)***

Legislation referred to:
Societies Act 1966

For the plaintiff - Usha Kulasegaran; M/s. Ranjit, Thomas & Kula

For the 1st and 2nd respondents - David Lingam; M/s. David Lingam & Co.

JUDGMENT

Wan Adnan bin Ismail J:
This is an application for the following declarations:

(a) A declaration that the first and second defendants are bound by the said Revised Constitution to circulate issues or the general nature thereof, where due notice has been given, to all members of Pertubuhan Akitek Malaysia before an Annual General Meeting to give all members a chance to deliberate on those issues at the Annual General Meeting
(b) A declaration that the failure of the first and second defendants to circulate and give notice to all the members of Pertubuhan Akitek Malaysia of the issues raised by the plaintiff in his letter dated 3 July 1992 is a breach of Clauses I.2.6, I.2.10, I.2.15, I.2.16 and VI.6 of the said Revised Constitution and a violation of the plaintiff's rights as a member of the said Pertubuhan Akitek Malaysia;
(c) A declaration that the first and second defendants are bound by the said Revised Constitution to discuss issues raised at the Annual General Meeting which due notice has been given, as stipulated in Clause VI.3.2(j) of the said Revised Constitution and not postpone it to an unknown date or forum; and
(d) A declaration that the resolution that was passed by 36 members at the said 26th Annual General Meeting is null and void and of no effect as there was a lack of quorum.

The plaintiff is an architect and a member of Pertubuhan Akitek Malaysia (PAM) a society registered under the Societies Act 1966. The 26th Annual General Meeting of PAM was called to be held on 18 July 1992. The plaintiff by his letter dated 3 July 1992 (Ex. KCC-1) submitted to the defendants a list of issues. The letter reads as follows:

> Dear Sirs,
>
> Twenty Six Annual General Meeting
>
> At the forthcoming Annual General Meeting, I will be raising the enclosed list of issues for Council to answer as the Conduct of Council may be seen to be less than propriety in the events mentioned, if the comments are not effectively rebutted.
>
> I hope Council is able to provide good grounds to justify its conduct so that the matter may be put to rest.

The plaintiff had expected the defendants to circulate the letter and list of issues to all members of PAM before the meeting. When he was told by the first defendant that the letter and list of issues would not be so circulated he wrote the letter dated 9 July 1992 addressed to "PAM Members" (Ex. KCC-3) and managed to send to a few members. The first defendant however circulated the plaintiff's 3rd of July letter and the list of issues to the members of the Council of PAM. The first defendant wrote to the plaintiff on 8 July 1992 as follows:

> Dear Mr Cheang,
>
> PAM AGM ON 18 JULY 1992
>
> We thank you for your letter of 3 July 1992 expressing your concern on various issues that you intend to raise at the forthcoming AGM.
>
> We trust members of Council present will be able to clarify where possible matters that are raised at the AGM. (Ex.K-2).

The plaintiff then on 10 July 1992 wrote to the first defendant as follows:

> Dear Kasi,
>
> PAM Annual General Meeting on 18 JULY 1992
>
> Thank you for your letter of 8th July 1992 and the contents noted.
>
> I will be raising additional issues on:
>
> (i) Distribution to members regarding details of issues raised.
> (ii) Other instances of misconduct by the Chairman, Arbitration Panel and the Council's condoment of such conduct." (Ex. K-3).

The issues raised by the plaintiff were read out at the AGM. The issue on Arbitration was discussed. After some further discussions there was a proposal that the issues be referred to another forum. The proposal was seconded and the following resolution was passed:

> That all the issues raised by K.C. Cheang through his letters of 2 [3] and 10 July 1992 be referred to another forum.

The voting on the proposal was as follows:

For the Motion	-	24
Against the Motion	-	11
Abstention	-	1

(See Minutes of Meeting Ex. K-5).

It was the contention of the plaintiff that the defendants were bound under the PAM's Revised Constitution to circulate his letter and list of issues (or the general nature thereof) to all members of PAM and their failure to do so was in breach of Clauses I.2.6, I.2.9, I.2.10, I.2.15, I.2.16 and VI.6 of the said Revised Constitution. The plaintiff also contended that the letter of 3 July was a notice under Clause VI.3.2. (j).

Clauses I.2.6, I.2.9, I.2.10, I.2.15 and I.2.16 are only among the Objects- and Powers of PAM stipulated in the Revised Constitution. Clause VI.6 reads as follows:

Notice of General Meeting.

> Not less than fourteen days notice of a General Meeting specifying the place, date and time of meeting, and in the case of special business the general nature of such business, shall be given to all Members of the Institute. The accidental omission to give notice of a meeting to, or the non-receipt of such notice by any Member shall not invalidate any resolution passed, or proceeding had, at any meeting.

It is this Clause and Clause VI.3.2. (j) that the plaintiff relied on for his contention that the issues that he raised or general nature thereof should be circulated to all members.

Clause VI.3.2 (j) provides as follows:

> VI.3.2 The ordinary business of the Annual General Meeting shall be as follows:
>
> (a) to receive the Annual Report of the Council.
> (b) ...
> (c) ...
> (d) ...
> (e) ...
> (f) ...
> (g) ...
> (h) ...
> (i) ...
> (j) to transact any other business of which **due notice in accordance with Rule shall have been given.**
>
> (emphasis added).

Reading sub-clause (j) above one would expect to find a Rule in the Revised Constitution which prescribes the procedure for the giving of 'due notice' to transact any business. Unfortunately there is no such Rule provided.

The question is whether the plaintiff's letter of 3 July was 'a case of special business' under Clause VI.6 and whether it was a notice under Clause VI.3.2 (j).

In my view the letter could not be a notice under Clause VI.3.2(j). The plaintiff only stated that he would be raising the issues for the Council to answer at the Annual General Meeting. In the list of issues, he highlighted certain events and issues in respect of which he sought explanations and clarifications from the Council. It could not therefore be regarded as a case of special business. There was no specific business that the Annual General Meeting was required to transact. There was no specific motion or resolution the Annual General Meeting was required to consider. The letter only imposed an obligation on the part of the Council being the governing body of PAM to give explanations and clarifications on the issues raised. This the Council did as shown in the minutes of the meeting (Ex. K-5).

The plaintiff also contended that the resolution passed at the Annual General Meeting referring the issues he raised to another forum was null and void because at the time the resolution was passed no quorum was present as at that time the number present was only 36 when the required number to constitute a quorum was 46.

It was not disputed that at the commencement of the meeting 60 members were present. (Ex. K-6).

Clause VI.7 of the Revised Constitution provides as follows:

> No business shall be transacted at any General Meeting unless a Quorum is present when the meeting proceeds to business ...

In re Hartley Baird LD [1955] 1 Ch. 143 it was held that the condition of Article 52 (which is same as Clause VI.7 stated above) was sufficiently complied with if there was a quorum present at the beginning of the meeting when it proceeded to business, and the subsequent departure of a member reducing the meeting below the number required for a quorum did not invalidate the proceedings of the meeting after

his departure. I agree with that decision. Therefore the resolution was validly passed.

It is clear that the plaintiff was not happy with the resolution referring the issues he raised to another forum which till now has not been convened, the convening of which, according to him should be made by the defendants. But he is not without a remedy under the Revised Constitution. Under Clause VI.4 he can requisition for an Extra Ordinary General Meeting and at the meeting he can even table a motion of no-confidence in the Council.

For the above reasons, I dismissed the plaintiff's application with costs.

GOO HEE SING

v.

WILL RAJA A/L PERUMAL & ANOR.

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[ORIGINATING SUMMONS NO. 24-746-1992]
1 SEPTEMBER 1993

LAND LAW: Caveat - Land having Restriction in interest - Dealing in land prohibited without consent of State Authority - Plaintiff purchased land without obtaining consent of State Authority - Whether caveatable interest acquired by plaintiff - Whether caveat entered by 'plaintiff' a nullity.

The plantiff and the first defendant had entered into a deed of sale for the purchase by the plaintiff of the first defendant's land.The said land was alienated to the first defendant by the State Authority with one special condition which reads:

> Tanah ini tidak boleh dijual,dipajak,digadai atau dipindahmilik dengan apa cara sekalipun tanpa kebenaran Pihak Berkuasa Negeri.

After the purported purchase was effected the plaintiff entered a caveat over the said land pending transfer of the title thereof by the first defendant. The first defendant never applied to the State Authority concerned for the sale or transfer of the said land either before or after the execution of the deed of sale and consequently no transfer of the land to the plaintiff had taken place or been effected. The plaintiff applied for specific performance of the deed of sale and for an extension of the caveat which he had earlier lodged over the said land.

The question was whether in the circumstance of the case any caveatable interest in the land could be acquired by the plaintiff.

Held:

As the prohibition in dealing with the land is total, nothing can happen without the consent of the Pihak Kuasa Negeri. Consequently, it must follow that a prospective purchaser, chargee or lessee of such land can have no caveatable interest in the land until the consent of the Pihak Kuasa Negeri has first been irrevocably obtained.

[Application dismissed].